

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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July 30, 2010

Elisabeth A. Shumaker  
Clerk of Court

AG EQUIPMENT COMPANY,

Plaintiff-Counter-Defendant -  
Appellant/Cross-Appellee,

and

EDWARD T. KURTZ, in his capacity as  
trustee of the Suzanne Ash Kurtz  
Revocable Trust,

Plaintiff,

v.

AIG LIFE INSURANCE COMPANY,  
INC.,

Defendant-Counter-Claimant -  
Appellee/Cross-Appellant,

and

MARK HEIDENREITER,

Defendant.

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AG EQUIPMENT COMPANY,

Plaintiff-Counter-Defendant -  
Appellant,

Nos. 09-5038 & 09-5044  
(D.C. No. 4:07-CV-00556-CVE-PJC)

v.

No. 09-5118

AIG LIFE INSURANCE COMPANY,

Defendant-Counter-Claimant -  
Appellee.

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**ORDER**

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Before **TACHA, EBEL**, and **HARTZ**, Circuit Judges.

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These matters are before the court upon our careful review of the jurisdictional issues presented. In short, we conclude the failure to set a specific amount in prejudgment interest renders the underlying judgments non-final. That lack of finality, in turn, is fatal to the continuation of these appeals as we lack jurisdiction. *See Garcia v. Burlington Northern R. Co.*, 818 F.3d 713, 721 (10<sup>th</sup> Cir. 1987)(noting prejudgment interest “must be a part of the primary damage relief” and “is not a collateral issue”). We note in this regard there is no indication the failure to fix an amount certain was a purely clerical error. *See Pratt v. Petroleum Prod. Mgt. Inc.*, 920 F.3d 651, 656 (10<sup>th</sup> Cir. 1990).

The district court is in the best position to address this prejudgment interest issue, and may do so on the record currently available. In addition, we note that because no final judgment has entered, the time for the parties to file motions under Fed. R. Civ. P.

59(e) has not technically begun.

The calendar notice setting these cases for oral argument on September 20, 2010 is vacated. We order these appeals dismissed for lack of appellate jurisdiction.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER  
Clerk of Court